IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7110 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMANSINH SARDARSINH RAVAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7110 of 2003

MR LATHIGARA for MR CP JADHAV for Petitioner No. 1

MR LB DABHI A.G.P. for Respondent No. 1

MR SUNIL S JOSHI for Respondent No. 2

MR TRILOK J PATEL for Respondent No. 3

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/12/2004

ORAL JUDGEMENT

1. The petitioner has by way of this petition challenged the order of the Development Commissioner dated 2nd May, 2003, whereby the Development Commissioner has confirmed the order dated 10th February, 2003 passed by the District Development Officer removing the petitioner under Section 57 of the Gujarat Panchayat Act, 1993.

2. The short facts of the case are that at the relevant time, the petitioner was holding the post of Sarpanch. It is the case of the petitioner that during his tenure as Sarpanch, a showcause notice dated 10th July, 2002 was issued, on the ground that he had committed certain irregularities during the year 2001-2002 and had misused the position of Sarpanch. In view of that he submitted his reply on 21st August, 2002. The petitioner further submitted that being dissatisfied by the explanation, the District Development Officer initiated proceedings against the petitioner under Section 57 (1) of the Act. Thereafter, the District Development Officer vide order dated 27th September, 2002 removed the petitioner from the post of Sarpanch.

2.1. Being aggrieved by the said order the petitioner preferred an Appeal under Section 57 (3) of the Act, before the Development Commissioner, wherein stay was granted. However, the same was vacated subsequently on certain flimsy grounds. The petitioner further submitted that in view of that he approached this Court by way of Special Civil Application No. 10589/2002, wherein, the Court had directed the Development Commissioner to decide the Appeal within a stipulated period. The petitioner further submitted that pursuant to the said order, the Development Commissioner fixed the hearing and vide order dated 2nd May, 2003, dismissed the appeal and confirmed the order passed by the District Development Officer. Hence, this petition.

3. Mr. Lathigara learned advocate for the petitioner contended that no notice was issued and only intimation for hearing was given after remanding the matter. He further contended that the District Development Officer has not considered the reply as well as the documents which are produced on record.

3.1. Mr. Lathigara has placed reliance on the decision of this Court rendered in Special Civil Application No.234 of 1999 dated 7th March, 2000 and more particularly on para 10 and 11, which reads as under :-

"10. Even if it is taken that the allegations

as were levelled had been framed on the basis of the report given by the Taluka Development Officer, such allegations were certainly required to be proved by way of evidence so as to show that it was the petitioner who was responsible for these allegations. It was to be seen as to what was the actual role of the petitioner so as to constitute a case of real misconduct against her. It is admitted that no inquiry whatsoever, was held and thus the concept of "some inquiry" as envisaged by Section 57 i.e. "after inquiry as it deems necessary" has been given a go bye, more particularly, when it is the case of the respondents themselves that no preliminary inquiry was held.

The opportunity would mean a real and effective opportunity. The real and effective opportunity would not simply mean taking a reply and pass the order taking the allegations as proof of the allegations. The effective opportunity would mean a real application of mind to the allegations, replies and the material placed in support of the allegations based on evidence, documentary or otherwise. While it is the grievance of the petitioner that large number of documents running into 1 to 264, which were filed along with the reply have not been considered, the authors of the impugned orders at places more than one have mentioned that the petitioner failed to substantiate her replies by documents. It therefore, appears to be a case of no real and effective consideration of documents before recording that the petitioner failed to substantiate her replies by documents.

11. For the purpose of removing a Sarpanch from holding the effective office, the officers who are charged with the statutory duties under the Act cannot act in such a cursory manner with casual approach so as to curtail or truncate the tenure of the holder of an elective office. The elected representatives for

the purpose of removal can't be treated like Govt. Servants whose services are controlled at the pleasure of the President or Governor under Article 310 of the Constitution. The officer charged with the power for removal under Section 57 does not enjoy any such pleasure. The pleasure doctrine is alien in case of elected representatives. If jejune grounds, it would simply mean throttling down the principles of democracy in the local self bodies and the elected representatives of the people like the petitioner would be made to loss their tenure at the altar of the arbitrary exercise of powers by the officers who have been charged with the duty under the Act to at least address themselves to the real object behind such provision besides the grounds and procedure. While such powers are given to the functionaries of the State under the Statute, the officers are charged with a very important duty of determining the rights of the elected persons and such rights cannot be lightly interfered with merely on the basis of the procedural errors in carrying out the development projects for which no single individual like the petitioner could be held responsible simply because she held the office of Sarpanch. For executing the policy decisions taken by the Panchayat, there are employees such as Engineers, Accountants, Talaties etc. who have to take care of these procedures. After all, the persons working as Sarpanchs are not supposed to be the experts with regard to the knowledge of the procedure. They are primarily concerned with the policies for the development of the local self-bodies and they can manifest their duties and functions through resolutions and to see that such decisions are carried out only through the concerned officers and the elected persons cannot be held liable if the officers faulter in following the procedure. The elected office bearers at Panchayat level are not supposed to be substantially trained or acquainted with such procedures. I find that in the

> instant case, the reasons which have been given and the allegations on the basis of which the petitioner has been removed from the office of Sarpanch cannot be said to be reasons which are germane to the grounds mentioned in Section 57 (1) of the Act. The allegations have not nexus with the real considerations which must weigh in such cases and, therefore, it is found that the orders have been passed for the purposes and reasons which can neither be said to be authorized nor permissible under law. The impugned orders are the result of a misconceived and disoriented approach so much so that the show cause notice dated 14th August, 1998 itself was misconceived."

3.3. Mr. Lathigara has further placed reliance on the decision of this Court in the case of Kanakbhai Narsangbhai Padhar v. State of Gujarat reported in 2002 (3) G.L.H. p.739, wherein this Court has held that before removing an elected representative the authority must consider whether there is a genuine ground available for removal and whether such a person is committing persistent defaults in discharging his duties.

3.4. Mr. Lathigara has next placed reliance on the decision of Apex Court in the case of Tarlochan Dev Sharma v. State of Punjab & Ors., reported in A.I.R. 2001 S.C. p.2524, wherein, the grounds of abuse of powers by the President has been defined and it has been held that there must be wilful abuse or an intentional wrong.

4. I have heard the learned advocates for the respective parties and have perused the relevant record. In my opinion, the aforesaid decisions will not apply to the facts of the present case inasmuch as the documents which are produced by the petitioner with regard to vouchers by the so called employer i.e. the son of the petitioner have been considered and referred in the order of both the authorities. However, the work was done without inviting tenders and the payment was made through cash instead of cheque. Further, a huge amount has been paid from the funds of public ex-chequer, without inviting any tenders, and, therefore, it is nothing but abuse of power. Further the contention with regard to non issuance of the notice is contrary to the facts in view of his reply filed against the notice issued to him. With regard to the contention of disqualification, it is

clear from the order of District Development Officer, wherein the District Development Officer that the misconduct in fact envisage for disqualification, but since notice for disqualification was not issued, no order could be passed for disqualification of the petitioner. Mere reference of such provision will not invalidate the order of District Development Officer.

5. In view of the above, in my opinion, since both the authorities have considered the matter on merits, no interference is called for by this Court under Article 227 of the Constitution of India. Hence, the petition stands disposed of. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[K.S. JHAVERI, J.]

/phalguni/